
(2015) 09 TP CK 0013
In the Tripura High Court
Case No : Writ Petition (C) No. 30 of 2014

Gautam Dey

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Government of India Act, 1935 — Section 240(3)
Penal Code, 1860 (IPC) — Section 323, 341, 506

Citation : (2015) LabIC 4366

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : R. Purkayastha, for the Appellant; S. Chakraborty, Addl. G.A.,
Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Talapatra, J—By this writ petition, the petitioner who was a Constable in the Armed Branch of Tripura Police, has challenged the final order under D.O. No. 602/2012 dated 26.11.2012 (Annexure-H to the writ petition), whereby he has been dismissed from the service pursuant to the purported disciplinary proceeding and also the order of the appellate authority dated 12.12.2013, confirming the said final order dismissing the petitioner from the service.

2. The facts are mostly admitted. Two departmental proceedings were launched against the petitioner for unauthorised absence on diverse period of time. In the first departmental proceeding, being D.P. No. 02/2011 by the memorandum dated 10.02.2011 (Annexure-A to the writ petition) the following charges were framed against the petitioner:

ARTICLE OF CHARGE NO-I

C/3355 Goutam Dey of Armed Branch, South Tripura District is charged with gross misconduct and negligence in duty in that while he was attached to

Dhajanagar Police lines on 13.01.2011 A.N, he un-authorizedly left Dhajanagar Police lines without prior permission from the competent authority. There after on 15.01.2011 evening he even assaulted by fist and blows to one Sri Subhas Nath S/O Jadu Gopal Nath of Thakurpally, PS Sabroom, South Tripura District under influence of liquor near by the Sajghar of Sabroom Town.

Thus the act of C/3355 Goutam Dey of Armed Branch, South Tripura District which is unbecoming and amounts to gross misconduct and negligence of duty, on the part of a member of disciplined force.

ARTICLE OF CHARGE NO-II

C/3355 Goutam Dey of Armed Branch, South Tripura District is charged with gross misconduct and negligence in duty in that while he was attached Dhajanagar Police lines, HQs, he was absenting himself unauthorizedly w.e.f. 13.01.2011 afternoon without prior permission or intimation from competent authority.

Thus the act of C/3355 Goutam Dey of Armed Branch, South Tripura District which is unbecoming and amounts to gross misconduct and negligence of duty, on the part of a member of disciplined force.

3. The petitioner filed his written statement of defence, providing the explanation for his absence. The petitioner asserted that since he fell suddenly ill, for attending the doctor, he left the Police lines and on the medical advice he was confined to rest. With the said statement dated 05.04.2011 (Annexure-B to the writ petition), the petitioner enclosed several medical certificates. The petitioner had finally contended that for his suffering from chronic hepatitis he could not attend the duty for the period from 13.01.2011 till the issuance of the memorandum dated 10.02.2011. The petitioner has however denied the allegation of assaulting one person, namely Subhas Nath. He submitted that on recovery from the illness he had resumed the duty on 01.03.2011 on furnishing the medical certificates.

4. It appears from the record that the petitioner was suspended w.e.f. 16.01.2011 by the D.O. No. 106/2011 (Annexure-C to the writ petition) with the direction that his Head Quarters would be the same Police lines.

5. After the inquiry, the inquiring authority, namely Manchak Ipper, the Sub-Divisional Police Officer, Sabroom, South Tripura filed the Enquiry Report on 03.09.2011 under No. 4357/SDPO/SBM/11 (Annexure-D to the writ petition) on returning the finding that from the proceeding records it has been proved that the petitioner had indulged in gross misconduct and negligence in duties and thus both the charges have been established. Thereafter, the disciplinary authority, the Superintendent of Police, South Tripura District passed the provisional order under D.O. No. 2259/201 dated 14.09.2011, concurring with the finding returned by the Enquiry Officer and proposing withholding of three yearly increments with cumulative effect from the date of the final order as

penalty for indulging in those misconducts. However, the petitioner was given an opportunity of making representation either in writing or by appearing before the Disciplinary Authority. A copy of the Enquiry Report dated 09.09.2011 has also been furnished with the said provisional order dated 14.09.2011.

6. The petitioner filed a representation on 18.10.2011, asserting that independence of the Enquiry Officer is shrouded and visited by influence from the superior authority, indicating to the Disciplinary Authority. According to the petitioner, the proposed penalty was disproportionate to the gravity of offence, it would have been proportionate if the petitioner was let off with censure or withholding of next promotion for a reasonable period. That would have been adequate or proportionate to the misconduct of unauthorized absence from duty. The petitioner has further asserted that the allegation of assaulting one person was the subject matter of investigation under Sabroom P.S. Case No. 03/11 dated 15.01.2011 under Sections 341/323/506 of the IPC and as such no inference could have been drawn pending completion of the investigation or trial. Thereafter, all on a sudden, by the notice dated 24.10.2011 (Annexure-E to the writ petition), the Disciplinary Authority having reference to the representation filed by the petitioner against the provisional order dated 14.09.2011, passed the following order:

Ref. South Tripura District vide D.P. No. 02/2011 dated 10.02.2011 you are suspended w.e.f. 16.01.2011 forenoon vide D.O. No. 106/2011 with a direction to abide by the police rules and discipline during the suspension period and also directed to stay at Dhajanagar Police Head Quarter under control of R.I. South. On 14.09.2011 provisional order was issued against you to stop 03(three) yearly increment with cumulative effect from the date of final order. Accordingly same was served to you on 08.10.2011. Later on 19.10.2011 you have submitted a representation directly to the office of the undersigned violating the police rules and discipline which amounts to gross misconduct being the member of discipline force. On perusal of records it is also seen that you were absenting yourself from Dhajanagar Police Head Quarter since long without any intimation to the competent authority.

You are hereby asked to submit your explanation within 5 (Five) days from the date of receipt of this communication, as to why dismissal from service should not be done because of your long unauthorised absence.

7. It is apparent on the face of the record that as the petitioner submitted a representation directly to the Superintendent of Police, South Tripura, which according to the Disciplinary Authority is violative of the Police rules and discipline, it amounted to gross misconduct of the petitioner, being a member of the disciplined force. Thus he was asked further to explain within five days why he should not be dismissed from service because of his long un-authorised absence.

8. Thereafter, the petitioner, by his representation dated 02.11.2011 tried to

explain as to his absence. He has stated that he was placed under suspension on 16.01.2011 and as per the order dated 16.01.2011, he was in his Head Quarters till 10.07.2011, but he was not paid the subsistence allowance, even though necessary orders were issued for payment of the subsistence allowance. In the representation dated 02.11.2011 the petitioner again asserted that the Enquiry Officer was not an independent one. He has also asserted that he made several representations for release of his subsistence allowance, but with no avail. He has further stated that without any preliminary inquiry as such, the articles of charges were levelled against him. After the said representation dated 02.11.2011 was made, by the memorandum dated 19.12.2011, the following charges were made afresh:

ARTICLE OF CHARGE NO-I

C/3355 Goutam Dey of Armed Branch, South Tripura District is charged with gross misconduct and negligence in duty in that while he was attached to Dhajanagar Police lines. C/3355 Goutam Dey was Commanded to avail 45 Days E.L on 24.07.2010 vide C.C. No. 132/A-Coy/DJN as per DO No. 1396/2010 dated 04.06.2010 and his joining date was on 07.09.2010. But he did not join in due time and unauthorizely overstay w.e.f. 07.09.2010 to 10.01.2011 total 126 (One hundred Twenty Six) days. Moreover the said constable also remained unauthorized absent from Dhajanagar Police Lines w.e.f. 13.01.2011 to 28.02.2011, 18.05.2011 to 29.05.2011, 07.07.2011 to 23.07.2011 and 29.07.2011 to till now without prior permission or intimation from competent authority.

Thus the act of C/3355 Goutam Dey of Armed Branch, South Tripura District is unbecoming which amounts to gross misconduct and negligence of duty, on the part of a member of disciplined force.

ARTICLE OF CHARGE NO-II

C/3355 Goutam Dey of Armed Branch, South Tripura District is charged with gross misconduct and dereliction in duty in that while he was attached Dhajanagar Police lines, HQs. Deliberately absents himself un-authorizedly w.e.f. 07.09.2010 to 10.01.2011, 13.01.2011 to 28.02.2011, 18.05.2011 to 29.05.2011, 07.07.2011 to 23.07.2011 and 29.07.2011 to till now repeatedly violating the order of the authority, which amounts gross misconduct being a member of disciplined force.

Thus the act of C/3355 Goutam Dey of Armed Branch, South Tripura District is unbecoming which amounts to gross misconduct and negligence of duty, on the part of a member of disciplined force.

9. The said proceeding was given a new departmental proceeding number, being D.P. No. 09/2011. However, later on the said departmental proceeding, being D.P. No. 09/2011 was renumbered as D.P. No. 04/2012 for bifurcation of the district. In response to the charges as levelled by the memorandum dated 19.12.2011

(Annexure-F to the writ petition), the petitioner disputed those allegations and gave his own version.

10. Though with the writ petition, no fresh enquiry report has been enclosed or placed, but from the counter-affidavit filed by the respondents, it appears that by the office order dated 06.02.2012 a fresh inquiry was directed vide the D.P. No. 09/2011, but they have also not enclosed any enquiry report against the said D.P. No. 09/2011. However, they have produced the provisional order dated 31.10.2012 (Annexure-R/6 to the counter-affidavit). In the said provisional order dated 31.10.2012, it has been mentioned that the said provisional order is in connection with the South District D.P. No. 02/12 and D.P. No. 04/12 (respectively old D.P. No. 02/2011 and old D.P. No. 09/2011). In the said provisional order dated 31.10.2012, the DPs were renumbered.

11. From the reading of the provisional order dated 31.10.2012, it also appears that the article of charges in the D.P. No. 02/2012 (old D.P. No. 02/2011) are the same and identical and those were communicated to the petitioner by the memorandum dated 10.02.2011 (Annexure-A to the writ petition), whereas the article of charges under D.P. No. 04/2012 (old D.P. No. 09/2011) are about unauthorised absence from the same Police lines for the period from 13.01.2011 to 28.02.2011, 18.05.2011 to 29.05.2011, 07.07.2011 to 23.07.2011 and 29.07.2011 till that date. The other charge under the D.P. No. 04/2012 (old D.P. No. 09/2011) is that in demonstration of gross misconduct and dereliction in duty, the petitioner was unauthorisedly absent from duty from 07.09.2010 to 10.01.2011, 13.01.2011 to 28.02.2011, 18.0.2011 to 29.05.2011, 07.07.2011 to 23.07.2011 and 29.07.2011 till that date.

12. Thus it is apparent beyond the pale of dispute that the articles of charge framed in the D.P. No. 04/2012 (old D.P. No. 09/2011) are to a greater extent overlapping so far the period of unauthorized absence w.e.f. 13.01.2011 is concerned. Further, from the written statement filed in response to the memorandum dated 19.12.2011, it would be eminently clear that the petitioner has denied all the charges brought against him. Despite that, there was no formal proceeding though a major penalty has been proposed to be imposed against the petitioner by the provisional order dated 31.10.2012. In the said provisional order, it has been reflected that "I have carefully gone through the findings of the inquiries in both the proceedings as conducted by the E.O. The Article of Charges in both the Departmental Proceedings as drawn up against C/13156 (3355) Goutam Dey has been proved conclusively". But, like the other provisional order, this provisional order dated 31.10.2012 does not reflect that the copy of the referred enquiry report was supplied to the petitioner. Even though the petitioner was afforded an opportunity of filing the representation, he did not file any representation and accordingly the final order dated 26.11.2012 (Annexure-H to the writ petition) has been passed by the disciplinary authority, dismissing the petitioner from his service, as per Rule 11(9) of the CCS (CCA) Rules, 1965 read with regulation 861 of the Police Regulations of Bengal, 1943,

as adopted by the Government of Tripura vide Notification No. F.60-PD/59 dated 01.03.1983. It has been further held that the period of suspension w.e.f. 16.01.2011 to 14.03.2011 has been treated as dies-non including the period of un-authorized absence mentioned in the article of charge of both the departmental proceedings i.e. 07.09.2010 to 10.01.2011, 13.01.2011 to 28.02.2011, 18.05.2011 to 29.05.2011, 07.07.2011 to 23.07.2011 and 29.07.2011. From reading of the provisional order dated 30.10.2012 and the final order dated 26.11.2012, it would further surface that the petitioner did not virtually participate in the subsequent proceeding. It has been recorded in both the orders as under:

"In both the Memo of Charges, the delinquent was asked to submit his written defence statement within 10(ten) days from the date of receipt of the charge Memo and (1) to state whether he desires to be heard in person (2) To furnish the names and addresses of the witnesses if any, he wishes to call in support of his defence (3) To furnish list of documents, if any which he wishes to produce in support of his defence (4) To intimate the name of defence assistance as per PHQ. Circular Order No. 5156-82/F.4/DGP/con/93, dated. 24.08.1993. But he neither submitted his written defence statement nor submitted any representation. Hence, Sri L. Darlong Addl. S.P (Gomati) and Shri Debjan Chakma SDPO, Sabroom were initially detailed as the Enquiry Officers to conduct the proceedings respectively D.P No. 04/2012 and 02/2012. Subsequently the D.P No. 04/2012 with all enclosures was handed over to SDPO, Sabroom for conducting the enquiry due to creation of new South District. The EO was directed to conduct day to day enquiry and to submit the D.P. with finding within 30 days. During enquiry the E.O. observed all the codal formalities to ensure the natural Justice of the delinquent. The delinquent was given ample opportunities to defend the charges and cross - examining the prosecution witnesses. All the prosecution witnesses were examined in presence of the delinquent. And lastly, the delinquent being offered denied to produce any defence witnesses and even denied to submit defence statement also.

In compliance of the order, the enquiry officer conducted day to day enquiry and returned the file along with findings respectively on 26.09.2012 and 27.10.2012 which was received by this office on the same dates. The E.O. in both the proceedings opined that the charges framed against the delinquent C/13156 (C/3355) Goutam Dey under the articles of charges proved conclusively."

13. Being aggrieved by the final order dated 26.11.2012 (Annexure-H to the writ petition), the petitioner has filed an appeal before the Deputy Inspector General of Police, South Range, Agartala, West Tripura, illustrating various breaches of procedural safeguards as well as the legalities. He has further stated that the criminal case ended in acquittal of the petitioner. Moreover, the petitioner has asserted that the absence which were referred in the charge as brought against him were not wilful, but the petitioner for medical reasons was compelled to absent himself. Thus, such absence cannot be held to be unauthorised rather

those are to be regularised by granting leave. According to the petitioner, if the period of his absence was declared dies-non under FR 17(1) then it would have been the proportionate action against the petitioner as in that event the petitioner would have been only disentitled from the pay and allowances for that period of absence without forfeiture of his past service. According to the petitioner, the penalty of dismissal from service is grossly disproportionate to the charge. However, all those pleas raised in the appeal were rejected by the appellate authority, the Deputy Inspector General of Police, Southern Range. The appellate authority, on purported appreciation of both the Enquiry Reports, has come to the inference that the charge in both the DPs have been fully established against the delinquent. Even his acquittal from the charge of assaulting one Subhas Nath, according to the appellate authority, a technical acquittal as the victim compounded the offence in terms of a compromise. The appellate court has quoted the order of the court of the Sessions Judge, passed in the appellate proceeding on accepting the prayer for compounding the offence punishable under Section 506 of the IPC. Thus the petitioner's plea that the petitioner did not misconduct by assaulting someone during the period when he claimed he was seriously ill and he was restrained to rest on medical advice was rejected. For the reason as stated, the appellate authority dismissed the appeal as preferred by the petitioner. The said appellate order has as well been questioned in this appeal.

14. The respondents, by filing the counter-affidavit, has contended as under:

"The delinquent has submitted his written defence statement on 09.01.2012 and received in the Office of Superintendent of Police, South on 16.01.2012. The Superintendent of Police, Gomati District, Udaipur vide Order No. 3658/SP(RSV)/GD/2012 dated 04.04.2012 sent the D.P. file and shadow file of D.P. No. 09/2011 drawn up against C/3355 Goutam Dey to the Superintendent of Police, South Tripura, Belonia for doing the needful. The Superintendent of Police, South Tripura District, Belonia vide Order No. 1654-55/SP(RSV)/SD/BLN/12 dated 01.05.2012 re-appointed Shri Debjan Chakma, the then SDPO, Sabroom as Enquiry Officer and sent the D.P. file to him for completion of enquiry. In this letter it is also mentioned that C/3355 Goutam Dey of South Tripura District, Belonia has been allotted new brass No. C/13156. The Superintendent of Police, South Tripura District, Belonia vide Order No. 265/2012 dated 09.06.2012 allotted new Departmental Proceeding number to the D.P. received from undivided South District, Udaipur and the instant D.P. No. 09/2011 dated 19.12.2011 has been allotted new D.P. No. 04/2012 dated 21.04.2012 and Enquiry Officer remained unchanged. In this D.P. the delinquent Constable C/13156(C/3355) Goutam Dey defended himself and he has no Defence Assistant. Shri Debjan Chakma, the then SDPO, Sabroom after completion of enquiry in connection with D.P. No. 04/2012 (old No. 09/2011) submitted his findings on 16.10.2012 through a letter vide SDPO, SBM Office No. 4289/SDPO/SBM/12 dated 18.10.2012. On receipt of the findings of D.P. No. 02/2012 (old No. 02/2011) and D.P. No. 04/2012 (old No. 09/2011) from the Enquiry Officer,

Provisional Order clubbing the findings of both D.P.s were passed vide D.O. No. 545/2012 dated 31.10.2012 against the delinquent Constable C/13156 (C/3355) Goutam Dey giving him the opportunity to made/submit representation either in writing or appearing in person."

[Emphasis added]

15. The petitioner, by filing a rejoinder, has stated that the respondents could not have started a fresh inquiry on the same article of charge for which an inquiry was already compete and on that report a provisional order of punishment has already been passed and as such, such re-inquiry in the manner as followed is unsustainable. According to the petitioner, he did not receive the provisional order and as such he was deprived of the opportunity of representing against the purported finding as returned by the Enquiry Officer. The respondents did not contest that statement by filing any other document, showing that the petitioner did receive the Enquiry Report submitted by Sri Debjan Chakma, the then SDPO at any point of time. The proceeding for major penalty against the petitioner has been launched under regulation 861 of the Police Regulations of Bengal, 1943, which is to some extent pari materia to the provisions of Rule 14 of the CCS (CCA) Rules, 1965. The regulation 861(f) of the Police Regulations of Bengal, 1943 provides as under:

"(f) The authority empowered to pass the orders of punishment shall grant a personal hearing to the person charged if prayed for and then pass the final orders. When the enquiring officer himself passes the final order, no personal hearing is necessary as the person charged is present throughout the enquiry.

After the enquiry has been completed and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed the accused officer shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the report of the enquiring officer and be called upon to show cause within a reasonable time not ordinarily exceeding one month against the particular penalty proposed to be inflicted except in the following cases-

(i) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(ii) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause; or

(iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity."

[Emphasis supplied]

16. Despite that specific assertion made by the petitioner that no copy of the

Enquiry Report, based on which the provisional order dated 31.10.2012 (Annexure-R/6 to the writ petition) has been passed, was supplied to the petitioner in terms of regulation 861(f) of the Police Regulations of Bengal, 1943 the respondents could not produce any records as stated, to demonstrate that the copy of the Enquiry Report was supplied to the petitioner affording him an opportunity to have his say on the findings thereof. Moreover, this has been declared by the apex court as one of the important limbs of principles of natural justice in *Union of India and others Vs. Mohd. Ramzan Khan*, AIR 1991 SC 471 : (1991) 61 FLR 736 : (1990) 4 JT 456 : (1991) 1 LLJ 29 : (1990) 2 SCALE 1094 : (1991) 1 SCC 588 : (1990) 3 SCR 248 Supp : (1991) 1 SLJ 196 : (1991) 1 UJ 163 and subsequently in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, AIR 1994 SC 1074 : (1993) 6 JT 1 : (1994) 1 LLJ 162 : (1993) 3 SCALE 952 : (1993) 4 SCC 727 : (1993) 2 SCR 576 Supp : (1993) 3 SLJ 193 .

17. Ms. R. Purkayastha, learned counsel appearing for the petitioner has pointedly submitted that without passing any order on the provisional order dated 14.09.2011 after the petitioner has submitted the representation against the proposed penalty on 18.10.2011, what has been passed or issued is in the form of the notice dated 24.10.2011, Annexure-E to the writ petition, asking the petitioner to submit his explanation as to why he shall not be dismissed from the service for long un-authorised absence. That action is wholly against the constitutional right for protection of the civil servants under Article 311(2) of the Constitution, which provides that, "no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges". The said notice dated 24.10.2011 does not lay any charge against the petitioner except mentioning "long un-authorised absence". That apart, Ms. Purkayastha, learned counsel has submitted that without providing any reason whatsoever, subsequently when the petitioner made his explanation by the representation dated 02.11.2011, the Disciplinary Authority, the Superintendent of Police, South Tripura District, by the memorandum dated 09.12.2011 (Annexure-F to the writ petition), had started a fresh inquiry by the D.P. No. 09/2011, which was later on re-numbered as D.P. No. 04/2012 for bifurcation of the District South Tripura. She has stated that the D.P. No. 02/2011 was neither dropped nor the memorandum of the charges dated 10.02.2011 (Annexure-A to the writ petition) was cancelled. Both the DPs, being D.P. No. 02/2012 and D.P. No. 04/2012 (re-numbered) had purportedly proceeded simultaneously, whereas the article of charge in D.P. No. 04/2012 are overlapping with the charge of the D.P. No. 02/2012. These are absolutely illegal acts depriving the petitioner of the fairness in the procedure. The said action, as apparent on the face of the records, was taken in bad faith as it transpires from the notice dated 24.10.2011 that, since the petitioner had submitted his representation dated 18.10.2011 directly to the Disciplinary Authority, the said action was taken in that manner.

18. Mr. S. Chakraborty, learned Addl. Govt. Advocate appearing for the

Disciplinary Authority as well as for the appellate authority, has submitted that the petitioner has suffered no prejudice as by affording all opportunities, the impugned penal action has been passed by the Disciplinary Authority and that has been affirmed by the appellate authority. This court may not interfere with such order as there is no breach of any legal safeguards or denial of the reasonable opportunity. Mr. Chakraborty, learned Addl. Govt. Advocate has submitted that even if there is some irregularity, those have not denuded the petitioner of his right of defending himself in the appropriate manner. The petitioner has preferred not to participate in the subsequent proceeding at his peril.

19. From the rival submissions as projected before us, the following questions call for our consideration:

(i) Whether the Disciplinary Authority can continue a fresh inquiry without cancelling the previous disciplinary proceedings or cancelling the previous memorandum of charge on the same or expand set of the charges?

(ii) Whether the non-supply of the Enquiry Report in the D.P. No. 04/2012 would vitiate the final order of dismissal as challenged in this writ petition?

WHETHER THE DISCIPLINARY AUTHORITY CAN CONTINUE AFRESH AN INQUIRY WITHOUT CANCELLING THE PREVIOUS DISCIPLINARY PROCEEDINGS OR CANCELLING THE MEMORANDUM OF CHARGES ON THE SAME OR EXPAND SET OF THE CHARGES?

20. No fresh inquiry can be permitted unless the former proceeding is dropped with adequate reason for cancellation or the original charge-memo is cancelled with adequate reason for cancelling or for dropping the proceeding. In the Swamy's Compilation, titled "Disciplinary Proceedings" in respect of Rule 15 of the CCS (CCA) Rules, 1965, a departmental communication, which has become now part of the procedural safeguards, being D.G., P&T's letter No. 114/324/78-Disc.II, dated 5th July, 1979, has been referred and quoted as under:

""(3) Reasons for cancellation of original charge-sheet to be mentioned if for issuing a fresh charge-sheet. It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of the CCS (CCA) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the Delinquent Officers unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on.""

21. Apart that, without completely dropping or abandoning the former proceeding, no fresh proceeding on the same charge or adding some more charges is not contemplated either under the CCS (CCA) Rules, 1965 or under regulation 861 of the Police Regulations of Bengal, 1943. The notice dated 24.10.2011 (Annexure-E to the writ petition), does not provide any reason why a fresh inquiry had to be initiated. Even the former proceeding has not been dropped or the memorandum of charge, based on which the former proceeding, being D.P. No. 02/2011 was initiated, was not cancelled. It appears that, for the reason that the petitioner had directly submitted the representation dated 18.10.2011 to the disciplinary authority on 19.10.2011, the said fresh proceeding was initiated. This cannot be any reason for launching a fresh proceeding on the same charge or with other additional charge or with amendment in the charge. The disciplinary authority is a quasi-judicial authority. Even if, the delinquent filed the representation directly, that cannot constitute misconduct nor can it invite such harsh action. As such, we are constrained to hold that the subsequent memorandum dated 19.12.2011 is unsustainable in law and accordingly it is set aside. As consequence of that, the final order of dismissal dated 26.11.2012 (Annexure-H to the writ petition) and the appellate order dated 12.12.2013 are also set aside and quashed.

WHETHER THE NON-SUPPLY OF THE ENQUIRY REPORT IN THE D.P. No. 04/2012 WOULD VITIATE THE FINAL ORDER OF DISMISSAL AS CHALLENGED IN THIS WRIT PETITION?

22. In *Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.*, the apex court has observed as under:

20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, AIR 1970 SC 150 : (1969) 2 SCC 262 : (1970) 1 SCR 457 , it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good

faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, AIR 1977 SC 965 : (1977) 34 FLR 381 : (1977) 2 SCC 256 : (1977) 2 SCR 904 : (1977) 9 UJ 184 , the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

22. In *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, AIR 1987 SC 71 : (1987) 61 CompCas 266 : (1986) 3 CompLJ 352 : (1986) 57 CTR 121 : (1987) 164 ITR 1 : (1986) 1 JT 671 : (1986) 2 SCALE 614 : (1986) 4 SCC 537 : (1986) 3 SCR 1049 , *Charan Lal Sahu Vs. Union of India*, AIR 1990 SC 1480 : (1990) 1 CompLJ 125 : (1989) 4 JT 582 : (1991) 2 SCALE 841 : (1990) 1 SCC 613 : (1989) 2 SCR 597 Supp and *C.B. Gautam Vs. Union of India and Others*, (1992) 108 CTR 304 : (1993) 199 ITR 530 : (1992) 6 JT 678 : (1993) 1 SCALE 216 : (1992) 3 SCALE 138 : (1993) 1 SCC 78 : (1992) 65 TAXMAN 440 , the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated.

23. What emerges from the above survey of the law on the subject is as follows:

24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the "reasonable opportunity" incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report and to show cause against the findings in the report was independent of

the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the 42nd Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the 42nd Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment.

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is

supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist

him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the 42nd Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the 42nd Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

[Emphasis supplied]

23. This safeguard has been incorporated in the Police Regulations of Bengal, way back in 1943 in the form of regulation 861(f). As such, supply of the copy of the inquiry report is an integral part of the statutory safeguard. Non-supply would definitely curb the safeguards, vitiating the proceeding beyond retrieval. However, as we have already quashed the impugned final order of dismissal and the appellate order, no further order as consequence of non-supply is required to be made in this case.

24. Notwithstanding our finding and direction/order as above, the respondents shall be at liberty to pass the final order as culmination of the provisional order dated 14.09.2011. As observed that since the Disciplinary Authority is a quasi-judicial authority, if the delinquent makes any representation directly, it cannot be held *stricto sensu* as misconduct, even if there was some departure from the administrative procedure. Hence, while passing any order, no consideration, interlinked with the charge, shall be made having regard to that aspect of the matter. So far the amendment or the additional charges, as levelled against the

petitioner by the memorandum dated 19.12.2011 (Annexure-F to the writ petition), are concerned, the respondents shall be at liberty to proceed against the petitioner if they are inclined to so proceed by a separate departmental proceeding, after affording the petitioner reasonable opportunity in terms of the regulation 861 of the Police Regulations of Bengal, 1943. Meanwhile, the petitioner be deemed reinstated, but release of pay and allowance shall wait. If such proceeding is not initiated within a period of 4(four) months from today, the pay and allowances of the petitioner shall be paid in accordance with the law. In that event, the competent authority will have the right to decide on his unauthorised absence per the existing leave rules. Payment of pay and allowances shall again be subject to the decision that will be taken in terms of the provisional order dated 14.09.2011. If the disciplinary proceeding is contemplated, the petitioner shall be paid the pay and allowances for the working period till the proceeding is brought to its logical end.

25. In the result, the writ petition stands allowed to the extent as indicated above. No order as to costs.